

Panaji, 28th July, 2016 (Sravana 6, 1938)

SERIES II No. 17

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA**Department of Forest****Order**

No. 4-2-2011/FOR/196

The Governor of Goa is pleased to order posting of Shri Deepak G. Pednekar, Assistant Conservator of Forest as Assistant Conservator of Forest (Legal Cell) thereby relieving Shri Amar Heblekar, Assistant Conservator of Forest of the additional charge, with immediate effect.

Shri Amar Heblekar shall continue to hold the charge of Principal Forest Training School, Valpoi.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Forests).

Porvorim, 15th July, 2016.

Department of Home**Home—General Division****Order**

No. 2/20/2011-HD(G)/2389

In pursuance of the directions regarding Montepio Quarters eviction cases pending in various courts including with the Estate Officers, the Government of Goa is pleased to constitute a committee comprising of following composition to examine and recommend on the matters pertaining to Montepio Quarters:-

1. Chief Secretary, Chairman.
2. Inspector General of Police, Panaji Goa, Member.
3. Additional Secretary (Finance), Member.
4. The Principal Chief Engineer, PWD, Member.

5. Joint Secretary (Law), Member.

6. Joint Secretary (G.A.), Member.

7. Under Secretary (Revenue), Member.

8. President or any Representative of Residents of Montepio, Altinho, Panaji-Goa.

9. Under Secretary (Home), Member Convener.

The terms of reference of the Committee shall be as below:

- To establishment ownership of the land on which Montepio quarters are located.
- To find amicable solution between Montepio occupants, Government and land owners so as to mutually share the land for enjoyment.
- Find lasting solution to the problem of Montepio residents.
- Any other recommendation as deemed fit.

The committee shall submit its detailed report within 3 (three) months.

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Home).

Porvorim, 19th July, 2016.

Directorate of Fire & Emergency Services**Order**

No. DFES/CONF/RTI/2016-17/2004

In exercise of the powers vested in me under Section 5(1) and (2) of the Right to Information Act, 2005, I hereby designate the following Officers as State Public Information Officer/State Assistant Public Information Officers:

- | | |
|----------------------------|--|
| 1. Deputy Director (Admn.) | ... State Public Information Officer (for all offices of Administration, Establishment and |
|----------------------------|--|

- Accounts under the Directorate of Fire and Emergency Services.
2. Deputy Director (Fire) ... State Public Information Officer (for the jurisdiction of North Zone having Panaji, Mapusa, Pernem, Vasco and Pilerne Fire Stations).
 3. Divisional Officer (District Fire Station Margao) ... State Public Information Officer (for jurisdiction of South Zone having Margao, Verna, Curchorem and Canacona Fire Stations).
 4. Divisional Officer (Central Fire Station Ponda) ... State Public Information Officer (for jurisdiction of Central Zone having Ponda, Bicholim, Old-Goa, Kundaim and Valpoi Fire Stations).
 5. Assistant Divisional Officer (Fire Force Headquarters Panaji) ... State Assistant Public Information Officer (for the jurisdiction of North Zone having Panaji, Mapusa, Pernem, Vasco and Pilerne Fire Stations).
 6. Assistant Divisional Officer (District Fire Station Margao) ... State Assistant Public Information Officer (for jurisdiction of South Zone having Margao, Verna, Curchorem and Canacona Fire Stations).
 7. Assistant Divisional Officer (Central Fire Station Ponda) ... State Assistant Public Information Officer (for the jurisdiction of Central Zone having Ponda, Bicholim, Old-Goa, Kundaim and Valpoi Fire Stations).

The State Assistant Public Information Officers mentioned above shall exercise this function in respect of any other Fire Station or unit that may be placed under their jurisdiction hereafter.

The State Assistant Public Information Officers shall receive the applications for information and

appeals under the Right to Information Act under their jurisdiction and forward the same alongwith detail information forthwith to the State Public Information Officer, for further necessary action at her/his end.

The State Public Information Officer on receipt of the applications shall deal with requests from persons seeking information within the prescribed time period and render reasonable assistance to the persons seeking such information.

Further, in terms of provisions of Section 19 of the said Act, the State Director of Fire and Emergency Services, Panaji shall be the First Appellate Authority for matters decided by the State Public Information Officer.

The powers and functions of the above officers are defined and specified in the Notification of Right to Information Act, 2005.

This supersedes all earlier Orders.

Ashok Menon, Director (Fire & Emergency Services).

Panaji, 15th July, 2016.

Department of Labour

Order

No. 24/3/87-LAB-Part-I/529

Government is pleased to order the transfer and posting of the following Insurance Medical Officers in E. S. I. Scheme under the Office of the Commissioner, Labour & Employment with immediate effect as under:

Sr. No.	Name of the Insurance Medical Officer	Present place of posting	Place of posting on transfer
1	2	3	4
1.	Dr. Saroj Salelkar	E.S.I. Dispensary, Honda	E.S.I. Dispensary, Verna.
2.	Dr. Sunil Kavlekar	E.S.I. Dispensary, Verna	E.S.I. Dispensary, Honda.
3.	Dr. Karishma Kalangutkar	E.S.I. Dispensary, Bicholim	E.S.I. Dispensary, Mapusa.

1	2	3	4
4. Dr. Pavitra	E.S.I. Dispensary, Desh-Mapusa	E.S.I. Dispensary, Bicholim.	
prabhu			

The transfers of the officials at Sr. Nos. 1 & 3 are made at their own requests and hence not entitled to claim TA/DA and joining time.

This order shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 19th July, 2016.

Notification

No. 28/34/2011-LAB/461

The following award passed by the Presiding Officer of the Labour Court-II, at Panaji-Goa on 02-05-2016 under reference No. IT/19/2012 in respect of Shri Deepak M. Tendolkar & 9 others, Workmen, represented by Gomantak Mazdoor Sangh, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 8th July, 2016.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding Officer)

Ref. No. IT/19/2012

Shri Deepak M. Tendolkar ... Workmen/Party I
& 9 Others,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Ponda Goa

V/s

M/s. Putzmeister India ... Employer/Party II (1)
Pvt. Ltd., 190, 191, Kundaim
Industrial Estate,
Kundaim Goa

M/s. A. P. Enterprises ... Employer/Party II (2)
Contractor
Mangerar, Carambolim,
Tiswadi Goa

None present for Workmen/Party I.

Adv. Shri P. Chawdikar for Employer/Party II (1).

Adv. Shri P. Agarwal for Employer/Party II (2).

AWARD

(Delivered on this the 2nd day of the month of
May of the year 2016)

By order dated 15-02-2012, bearing No. 28/34/2011-LAB/95, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether M/s. A. P. Enterprises is a sham contractor?

(2) If the answer to issue No. (1) is in the affirmative, then, whether the following employees can be treated as direct employees?

Sr. No.	Name of Workmen	Designation
1)	Shri Deepak M. Tendolkar	Hydraulic Fitter.
2)	Shri Durgadas D. Gawade	Hydraulic Fitter.
3)	Shri Ajay Gawade	Hydraulic Fitter.
4)	Shri Pratap C. Naik	Forklift Driver.
5)	Shri Appaji A. Naik	Helper.
6)	Shri Subhash Y. Mirashi	Helper.
7)	Shri Ranjit P. Sharma	Welder.
8)	Shri Thanu S. Kurtikar	Helper.
9)	Shri Soumitra R. Bobhate	Helper.
10)	Shri Narayan C. Rawool	Store Helper.

(3) If the answer to issue No. (2) is in the affirmative, then, whether the above mentioned workmen are entitled for reinstatement with full back wages and continuity in services?

(4) If the answer to issue No. (3) is in the negative, then, to what relief the workmen are entitled?"

2. Upon receipt of the reference it was registered as IT/19/12 and registered AD notices were issued to both the parties. Pursuant to service of notices Adv. Shri S. Saudagar Naik appeared for Party I and Adv. Shri P. Chawdikar appeared for Party II (1) and filed a written statement at Exb.8 and Adv. P. Agarwal appeared for Party II (2) and filed a written statement at Exb. 9.

3. Issues were framed at Exb. 13.

4. In the claim statement, it is stated that A. P. Enterprises was a sham contractor managed and controlled by the Employer/Party II with a view to circumvent/defeat the provisions of statutory Labour Legislation applicable to the factory/establishment of Putzmeister India Pvt. Ltd., Kundaim Industrial Estate, Kundaim, Goa and that it is masquerade adopted by the principal Employer namely Putzmeister India Pvt. Ltd., to circumvent the provisions of Industrial Law. The Party I was directly appointed on the relevant dates by the Party II and was permitted ingress and egress into the premises of the Party II. The Employer/Party II allotted work to the Workmen, supervised and trained them directly at the workplace, disciplined them directly through its Officers and Executives directly employed by the Party II. Party I were extended medical facilities and concessional transport by Party II. The Party I have been working continuously for more than 240 days during the preceding twelve months as on 26-03-2011.

5. The Party II illegally and arbitrarily terminated their services on 26-03-2011 and that acts of commission and omission of the Employer/Party II are illegal, arbitrary and have imposed undue pain, hardship and suffering on the workmen/Party I and their families. The actions of the Employer/Party II cannot be countenanced in law. It is apparent that the Contractor was engaged by the Principal Employer on 16-03-2011 with malafides to terminate the services of the Workmen/Party I on 26-03-2011, within a period of 10 days of obtaining the license under the Contract Labour (Regulation and Abolition) Act, 1970 by A. P. Enterprises (contractor), at the behest of M/s. Putzmeister India Pvt. Ltd. (Principal Employer). The entire transaction is an artifice/deception/pretense/sham to circumvent/defeat the provisions of applicable labour legislation and more specially the provisions of the Industrial Disputes Act, 1947. The Party I are entitled to reinstatement in service of the Employer/Party II as permanent workmen. Hence, the reference.

6. In the written statement, Party II (1) claimed that the present reference is illegal, invalid, void and not maintainable and liable to be rejected as against Party II (1). Party I workmen were employed independently through the contractor i.e. Party II (2) and the Party II (2) was having independent ESI and EPF code number with respect to the said employees since the beginning and the said contractor was complying with the provisions of the said Acts. The said contractor was running its establishment in the name of M/s. Swastik

Enterprises and the contract was terminated vide letter dated 28-11-2008 with effect from 31-12-2008. Subsequently, the majority of workmen i.e. Party I working with the said contractor were not working in the company for approximately 6 months. Thereafter, vide service contract dated 30-06-2009 fresh contract was signed with the same contractor in the name of A.P. Enterprises and all the terms and conditions were mentioned in the said contract. The Party II (1) company since 2009 obtained license in the name of M/s. A. P. Enterprises. The Party II (2) used to supervise the said workers independently and the Party II (1) was not having direct control over the said workers and the termination of the contract by the Party II (1) company of the contractor Party II (2) is perfectly legal and justified as such no relief of whatsoever nature can be granted against the Party II(1) company.

7. In the written statement, the Party II (2) has claimed that the reference for adjudication of the alleged dispute is illegal, invalid, void and not maintainable. Party II (1) had engaged a contractor M/s. Swastik Enterprises for doing the work of housekeeping and other residual works at the factory of the Party II (1) w.e.f. 01-01-2005 and upto 31-12-2008. The said contractor had deputed 10 workmen for work of the Party II (1) w.e.f. 01-01-2005 and had withdrawn the said workers from 01-01-2009 on the termination of the contract by the Party II (1). Party II (2) is an independent establishment and is having independent ESI and EPF code number with respect to the employees of the Party II (2) including the Party I workmen since the beginning and the Party II (2) had been complying the provisions of the said Acts. Party II (2) further stated that during the period of the contract with the Party II (1), the proprietor of the Party II(2) was himself supervising the work of the said workers and the Party II (1) was not having any direct control over the working of the said workers. Party II (1) had terminated its contract from 25-03-2011 by letter dated 24-02-2011. Pursuant to the termination of the contract by the Party II (1), the Party II(2) had to withdraw the Party I workmen from the establishment of Party II (1) w.e.f. 26-03-2011.

8. In the course of proceedings, the matter was fixed for evidence, however the Party I did not tender any evidence. Records reveal that Party I thereafter stopped appearing before the Court so also they were not represented inspite of several opportunities and as such the matter was fixed for examination in chief as well as the cross examination of Party II (1) and Party II (2). Party II (1) placed on record his affidavit-in-evidence at Exb. 15.

9. Party II (I) examined Shri Gurudarshan Chari and has produced on record copy of service contract at Exb.16, copy of quotation at Exb.17, copy of registration certificate of establishment at Exb. 18, copy of certificates of registration under Contract Labour dated 17-09-2009 (14-12-2009 and 08-04-2011) at Exb.19 colly, copy of termination of service contract dated 24-02-2011 at Exb. 20, Copy of termination of housekeeping service contract at Exb. 21, copy of 5 samples bills at Exb. 22, copy of letter dated 04-02-2011 at Exb. 23 and copy of letter dated 06-05-2011 along with enclosure attached to the said letter from A to F (8 pages) at Exb. 24 colly.

10. No evidence was led by Party II (2).

11. Arguments heard.

12. My answers to above issues are as follows:-

Issue No. 1 : In the negative.

Issue No. 2 : In the negative.

Issue No. 3 : In the negative.

Issue No. 4 : In the affirmative

Issue No. 5 : In the negative.

Issue No. 6 : In the affirmative.

Issue No. 7 : As per final Award.

REASONS

Issue Nos. 1, 2 and 3:

13. It is well settled that burden of proof would lie on a party who would fail, if no evidence is led by either of the parties. The test is, which party will fail if the evidence is not led before the Court in proceedings in the reference made to it for adjudication by the State Government and if reference is made by the State Government at the instance of the workmen and for the benefit of the workmen, it is for workmen to lead evidence and in the absence of any evidence being led by or on behalf of the workmen, the reference is bound to be answered against the workmen as the general rule is that he who approaches a Court for relief should prove his case as burden of proving whether or not the order of termination of services is valid lies on the person who challenges the validity of the order.

14. Discernibly, the Party I did not tender any evidence before the Court and on the contrary stopped appearing before the Court nor represented inspite of giving several opportunities and therefore the reference which was made by the Appropriate Government and at the instance of the workmen and for their benefits should fail for lack of evidence as the general rule is that one who approaches a Court for relief should prove his case

as the burden lies on the person who challenges the validity of the order. The Party I has therefore failed to prove that Party II (2) is a sham contractor managed and controlled by Party II (1) with a view to circumvent/defeat the provisions of statutory Labour Legislation applicable to the establishment of Party II (1) and that they were directly appointed on the relevant dates by Party II (1) and were permitted ingress and egress into the premises of Party II (1), so also that Party II (1) illegally and arbitrarily terminated their services on 26-03-2011. The reference by the State Government on behalf of the workmen is therefore bound to be answered against the workmen. Hence, issue Nos. 1, 2 and 3 are answered in the negative.

Issue Nos. 4 & 6:

15. It has been observed in the case of **Maharashtra Sugar Mills Ltd. V. State of Bombay, AIR 1951 SC 313** that word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and "workman" shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. The circumstances under which contract labour could be treated as direct workman of the principal employer have been held to be only the following ones:

- (i) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, and
- (ii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed of the services of a contractor and the Court held that the contract labour would indeed be the employees of the principal employer.

A person who is not an outworker but satisfies the requirement of the first limb of the definition of "workman" would, by the very definition, fall within the meaning of the term "workman". Even so, if such a workman is within the ambit of the contract

labour, unless he falls within the classes mentioned in the preceding para herein, he cannot be treated as a regular employee of the principal employer.

16. The Party II (1) examined its Senior Officer (HR), Shri Gurudarshan Chari who claimed that Party II (1) is engaged in manufacturing of concrete pumps, pipeline, spares and accessories and that Party I workmen were employed through the contractor, i.e. Party II (2) and that Party II (2) was having independent ESI and PF code number with respect to the said employees and that said contractor was running its establishment in the name of M/s. Swastik Enterprises and that contract was terminated vide letter dated 28-11-2008 w.e.f. 31-12-2008. He also claimed that fresh contract was signed on 30-06-2009 with the same contractor in the name of M/s. A. P. Enterprises and that said Party II (1) since 2009 obtained license and that they used to supervise the said workmen independently and they are not having direct control over the said workers. The licenses obtained by the Party II (1) company were for miscellaneous work. The training, supervision, disciplinary actions etc. are all done by the said contractor. The wages of the said workmen were always paid by the contractor and not by the company. The wage registers/attendance registers of the said workmen were maintained by the said contractor. The Party I workmen used to get medical facility from the ESI Corporation through the contractor.

17. The service contract at Exb. 16 between Party I and Party II (2) show that the said contract was for providing housekeeping services and supplying casual labourers in their establishment at Kundaim Goa and the Party II (2) would provide and supervise casual labourers for the cleaning services and any other incidental activity and that there will be no employer-employee relation between them, the Party II (2) being independent contractor. The Party II (2) paid service charges of Rs. 10 per employee per day which would cover payment of minimum wages, paid holidays, bonus, gratuity, etc. to their workmen as per law and that Party II (2) would pay ESI, PF and other benefits and that Party II (2) will be responsible for conduct and good behaviour of the said employees within the factory premises, which show that there was valid service contract between Party I and Party II (2) and that the services of Party I were provided by Party II (2) for cleaning and other incidental activity. The quotation of Party II (2) at Exb. 17, Registration certificate of establishment of Party II (2) and Party II (1) at Exb. 18 and 19 colly show that Party II (2) had engaged labourers for doing miscellaneous work of Party II (1).

18. The termination of service contract dated 24-02-2011 by Party II (1) of Party II (2) at Exb. 20 with respect to housekeeping service and supplying casual labourers also does not auger well for the case of Party I. The sample bills at Exb. 22 colly issued by Party II (2) to Party II (1) show that Party II (2) was having independent ESI and PF code number with respect to Party I and that Party I workmen were employed through Party II (2) contractor. The letter dated 04-02-2011 at Exb. 23 shows that the casual workmen Shri Ranjit Sharma had misbehaved with their staff on 04-03-2011 and Party II (2) was requested by Party II (1) to take necessary action against the said workman. The letter dated 06-05-2011 at Exb. 24 colly addressed to Asst. Labour Commissioner at Ponda Goa show that Party II (2) was registered with office of Labour Commissioner, Panaji and that Party II (1) offered a contract to their establishment and that they were handling the labour work at the company and the labour work allotment of said employees was done by Party II (2) and their wages including emoluments as well as statutory dues were paid by Party II (2) and that the service contract had been terminated by Party II (1) w.e.f. 25-03-2011 due to non satisfactory performance.

19. The above facts and the documents produced on record by Party II (1) have not been disputed either by Party I or Party II (2). There is nothing on record that Party I were directly appointed by Party II (1), on the contrary the Party II (1) has shown that Party I were the employees of Party II (2) and that there was no employer-employee relationship between Party II (1) and Party I and therefore the present dispute cannot be covered under Industrial Disputes Act. The fact that Party II (1) terminated its contract with Party II (2) from 25-03-2011 by letter dated 24-02-2011 pursuant to which the workmen from Party I were withdrawn from the establishment of Party II (1) has not been disputed Party II (2). The materials on record therefore clearly show that Party I were not the workmen of Party II (1) nor they were the employees of Party II (1). No attendance registers or wages registers were maintained by Party II (1) nor they had any control over the said workers nor the Party II (1) had issued any appointment orders nor they exercised disciplinary control over Party I.

20. The total supervision and control were exercised by Party II (2) over the work done by the workers of Party I. The payments were also made to Party I by Party II (2). No direct payments were made to Party I by Party II (1). The ESI and PF are paid by Party II (2) and not Party II (1). In short, the

Party II (1) was not the appointing authority nor the pay master nor had any control over the disciplinary action, the services conditions, the control and supervision and right to reject. It therefore cannot be said that there was any relationship of master and servant between Party I and Party II (1) or that contract was a sham and not genuine one. The Party II (1) having proved issues Nos. 4 and 6, the same are answered in the affirmative.

Issue No. 5:

21. Party II (1) is unable to show nor led any evidence that Shri Deepak Tendulkar had no authority to file the present reference on behalf of other workmen. It is therefore above issue is answered in the negative.

22. The Party I having failed to discharge the burden of proving the case, I am unable to record any findings on the issues referred to the Tribunal by the Appropriate Government for want of evidence adduced by the Party I in support of said issues. The Party I having failed to lead any evidence, the reference is bound to be answered against the workmen.

23. In the result, I pass the following:

ORDER

1. The reference is answered against the Workmen/Party I.
2. No order as to costs.
3. Inform the Government accordingly.

Sd/-

(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal
& Labour Court

Notification

No. 28/24/2012-LAB/481

The following award passed by the Labour Court-II, at Panaji-Goa on 12-04-2016 under reference No. IT/04/12 in respect of Shri Gapur Kazi, represented by the President, Majorda Beach Resort Employees Union, Majorda, Salcete-Goa, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).
Porvorim, 12th July, 2016.

IN THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/04/12

Shri Gapur Kazi,
Rep. by the President,
Majorda Beach Resort
Employees Union,
Majorda, Salcete-Goa ... Workman/Party I.

V/s

M/s. Majorda Beach Resort
Majorda,
Salcete-Goa ... Employer/Party II.

Party I/Workman represented by Shri P. Gaonkar.
Party II/Employer represented by Adv. Shri M. S. Bhandodkar.

Panaji, Dated: 12-04-2016.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 25-10-2012, bearing No. 28/24/2012-LAB/587, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court, Panaji-Goa in turn assigned the present reference for its adjudication to this Labour Court-II, Panaji-Goa, by her order dated 29-10-2012.

"(1) Whether the non-employment of Shri Gapur Kazi, Painter, with effect from 03-06-2010, by the management of M/s. Majorda Beach Resort, Majorda, Goa, is a case of refusal of employment or an instance of voluntary absence on the part of the workman?

(2) In either case, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/04/2012 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 28-12-2012 at Exb. 3. The facts of the case, in brief, as pleaded by the Workman are that he was working as 'Painter' with the Employer/Party-II (for short "Employer") continuously from 04-11-1993

till the date of his refusal of employment. He stated that on 15-03-2010, he had applied for privileged leave for the period from 03-05-2010 till 22-05-2010 to attend the marriage ceremony of his niece and nephew at his native place in Maharashtra. He stated that on 20-05-2010 his wife suddenly got sick and had to be admitted in Government hospital. He stated that during the said period, he received a communication that he was issued a show-cause notice dated 03-06-2010 pertaining to his absenteeism from 01-05-2010 till 02-06-2010 and directed him to report for duties. He stated that accordingly, after making an alternate arrangement, he came to join his duties on 19-06-2010. He stated that however, he was not allowed to re-join the duty. He stated that he therefore, vide its representation dated 19-06-2010, requested the Employer to allow him to re-join the duty. He stated that in his reply dated 25-06-2010 to the letter of the Employer dated 22-06-2010, he stated that his head of the department had informed him that after completing his work, he would be allowed to go home. He stated that accordingly, he had completed the work allotted to him. He stated that he had informed the Employer, vide his letter dated 01-05-2010 that he has applied for privilege leave on 15-03-2010 for a period of 20 days from 03-05-2010 to 22-05-2010 to attend the marriage of his relation. He stated that he had also sent the medical certificates of his wife from the primary health centre stating that his wife was under their treatment from 21-05-2010. He stated that instead of his representation dated 19-06-2010, the Employer did not allow him to re-join his duties. He stated that the Employer terminated his services w.e.f. 03-06-2010 by their letter dated 22-06-2010. He stated that he raised the demands for his reinstatement with full back wages and continuity in service by his representation dated 24-06-2010. He stated that the union therefore, raised an industrial dispute before the Dy. Labour Commissioner, Margao-Goa, by their letter dated 25-06-2010, which resulted in failure.

3. The Workman challenged his order of termination of service by contending to be illegal and unjustified as the Employer has not issued any charge-sheet for the alleged absenteeism nor conducted an enquiry. He therefore submitted that the refusal of employment to him by the Employer is in violation of principles of natural justice and as such it is illegal, unjustified and bad-in-law. The Workman submitted that after refusal of employment, he is unemployed. The workman therefore, prayed that the action of the Employer in refusing him employment w.e.f. 03-06-2010 be

declared as illegal and unjustified and he be granted the relief of reinstatement with full back wages and continuity in service.

4. The Employer resisted the claim of the Workman by filing its written statement on 11-02-2013 at Exb. 6. The Employer, as and by way of preliminary objections, raised in its written statement filed in the present proceedings submitted that the entire reference is bad-in-law, not maintainable and ought to be rejected on the following grounds. The Employer stated that it has never terminated the services of the Workman. The Employer stated that the Workman has not been reporting for services w.e.f. 01-05-2010. The Employer stated that even after asking him to report for work, the workman deliberately and intentionally did not report for his duties. The Employer stated that it has, vide its letter dated 22-06-2010, implemented the clause 9 of deemed resignation of the appointment letter issued to the Workman.

5. The Employer stated that it is in the business of hotel industry at Majorda, Goa, catering with the Indian and foreign guests. The Employer stated that the Workman joined in their establishment as a 'General Tradesman-G.T.M. (Painter)', in the Engineering department on 01-11-1993. The Employer stated that the Workman was in the habit of remaining absent without intimation/permission from his superiors. The Employer stated that it had therefore issued a show-cause notice to the Workman on 18-01-2007. The Employer stated that the Workman replied to the said show-cause notice by his reply dated 22-01-2007. The Employer stated that since the reply submitted by the Workman was not found to be satisfactory, he was suspended pending enquiry and result thereof on 24-01-2007. The Employer stated that it has issued the Workman a charge-sheet dated 26-03-2007. The Employer stated that the Workman filed his reply to the said charge-sheet on 29-03-2007. The Employer stated that thereafter an enquiry was initiated against the Workman. The Employer stated that during the course of enquiry on 03-01-2009, the Workman admitted the charges levelled against him and requested the management to allow him to join duty. The Employer stated that considering the request made by the Workman and in order to give him an opportunity, it had taken a lenient view in the matter and as by way of punishment, he was suspended for four days from 07-01-2009 to 10-01-2009 vide letter dated 06-01-2009. The Employer stated that thereafter vide its letter dated 12-07-2009, it withdrew the suspension of the Workman and asked him to resume duties w.e.f. 14-07-2009.

6. The Employer stated that thereafter also the Workman continued to commit misconducts. The Employer stated that on several occasions, it was observed by Mr. Prabhu Dessai—Chief Engineer, that the Workman was not performing his duties properly. The Employer stated that the Workman was deliberately performing his painting duty with an intention to spoil and waste. The Employer stated that they have also observed that the Workman was spending more time on breaks for morning and evening tea and during lunch and therefore on 14-10-2009, it had issued a warning letter to the Workman.

7. The Employer stated that on 15-04-2010, the Workman applied for leave for the period from 03-05-2010 to 22-05-2010 to his departmental head. The Employer stated that however, the management did not approve the said leave application of the Workman as the rainy season was to commence and there were several jobs pending to be performed before the monsoon. The Employer stated that during this period, the other painter was scheduled to undergo an operative procedure planned much earlier. The Employer stated that therefore, its Chief Engineer informed the Workman verbally that his leave has not been sanctioned. The Employer stated that inspite of his leave not being sanctioned, the Workman proceeded on unauthorized absence w.e.f. 01-05-2010. The Employer stated that as a result both of its painters were unavailable and daily wage painters were hired to complete the work. The Employer submitted that due to unavailability of painters, during the said period, they had to face great difficulties. The Employer stated that since the Workman did not join the duties till 02-06-2010, a show cause notice dated 03-06-2010 was sent to him by ordinary post/under certificate of posting/register post on his last known address as per their records. The Employer stated that the show-cause notice sent by ordinary post and under certificate of posting were not received back by them and therefore it was presumed that the said show-cause notice was received by the Workman. The Employer stated that the show-cause notice 'sent by registered post was returned back to them on 14-06-2010 with the postal remark "not claimed". The Employer stated that in the said show-cause notice, the attention of the workman was invited to clause No. 9 of the appointment letter dated 04-11-1993, issued to him and he was required to show cause as to why strict disciplinary action should not be taken against him, by implementing the above clause.

8. The Employer stated that thereafter on 19-06-2010, at 9.15 a.m., the Workman came to the hotel and collected the show-cause notice. The Employer stated that the Workman submitted his reply to the said show-cause notice dated 19-06-2010, which was received by them on 21-06-2010. The Employer submitted that the contents of the said reply are totally false and baseless. The Employer stated that on 10-06-2010, it has received a fax from the Workman i.e. certificate dated 09-06-2010 issued by the Medical Officer, Primary Health Centre, Bhalwani, Taluka Pandharpur, certifying that Mrs. Mumtaj Gapur Khan is suffering from hypertension and she will require hospitalization for further investigation and treatment. The Employer stated that they totally denies the contents of the said medical certificate issued by the Workman. The Employer stated that the said certificate has no relevancy as it was received by them only on 10-06-2010. The Employer submitted that the said certificate is infact amounts to forgery. The Employer stated that the said facts did not contain any request from the Workman for extension of leave. The Employer stated that it has issued a letter dated 22-06-2010 to the Workman stating that it has decided to implement said clause No. 9 of the appointment letter issued to the workman. The Employer submitted that it is deemed that the Workman has resigned from their services w.e.f. 03-06-2010. The Employer stated that the Workman refused to accept the said letter and therefore, the same was sent to him by registered post, which was received by the Workman on 23-06-2010. The Employer stated that thereafter, the Workman submitted his reply dated 25-06-2010 to their letter dated 22-06-2010. The Employer stated that it has sent a reply dated 11-03-2011 to the Workman denying all the allegations/submissions made in the said reply of the Workman dated 25-06-2010 being totally false and baseless.

9. The Employer submitted that since the Workman remained unauthorized absent from duty and even after asking him to report for work, he deliberately and intentionally did not join back for work, therefore, it was deemed that the Workman has resigned from their services. The Employer submitted that it has never terminated the services of the Workman, but he himself remained away from work and not reported for duty. The Employer submitted that it has fully justified in implementing the clause No. 9 of the appointment letter dated 04-11-1993, which was accepted by the Workman at the time of joining duty. The Employer submitted that the Workman has no right to challenge the

said clause of his appointment letter and as such the entire reference is ought to be rejected. The Employer denied the overall case of the Workman as pleaded by him and prayed for dismissal of the present reference in limine.

10. Thereafter, the Workman filed his Re-joinder on 28-02-2013 at Exb.7. The Workman, by way of his Re-joinder, reiterates and confirms all the submissions and averments made by him in his Claim Statement to be true and correct and denies all the statements and averments made by the Employer in its Written Statement, which are contrary and inconsistent with the statements and averments made by him. The Workman stated that he had applied for leave on 07-04-2010 for the period from 03-05-2010 to 22-05-2010 on account of marriage of his close relation. He submitted that clause No. 9 of his appointment letter dated 04-11-1993 is unfair and it amounts to contracting out the provisions of Industrial Employment Standing Orders Act and other provisions of law in force.

11. Based on the pleadings filed by the respective parties, this Labour Court II framed the following issues on 14-03-2013 at Exb. 8.

1. Whether the Workman/Party I proves that he has been refused employment by the Employer w.e.f. 03-06-2010?
2. Whether the Workman/Party I proves that the refusal of employment to him by the Employer/Party II w.e.f. 03-06-2010 is illegal and unjustified?
3. Whether the Employer/Party II proves that the Workman voluntarily remained absent on and from 01-05-2010 deliberately and intentionally?
4. Whether the Workman/Party I proves that he is entitled to any relief?
5. What Order? What Award?

12. My answers to the aforesaid issues are as under:

- | | |
|------------------------|-----------------------|
| (a) Issue No. 1 | : In the Negative. |
| (b) Issue No. 2 | : Does not arise. |
| (c) Issue No. 3 | : In the affirmative. |
| (d) Issue Nos. 4 and 5 | : As per final order. |

REASONS

I have heard the oral arguments of Id. Rep. Shri P. Gaonkar, appearing for the Workman as well as Ld. Adv. Shri M. S. Bhandodkar, appearing for the Employer.

13. Ld. Rep. Shri P. Gaonkar, representing the Workman, during the course of his oral arguments submitted that admittedly, the Workman was continuously working with the Employer as Painter, since 04-11-1993 till he was refused employment w.e.f. 03-06-2010. He submitted that the Workman has proceeded on privilege leave for the period from 03-05-2010 to 22-05-2010 on account of marriage of his close relation. He submitted that on 20-05-2010 his wife suddenly got sick and had to be admitted in Government hospital. He submitted that the Workman was issued a show-cause notice dated 03-06-2010 for his absenteeism from 01-05-2010 to 02-06-2010. He submitted that the Workman was however, not allowed to re-join his duties on 19-06-2010, when he went to re-join his duties. He submitted that the Workman has submitted the medical certificates of his wife as well as marriage invitation card in support of his oral evidence. He submitted that the refusal of employment to the Workman is illegal and unjustified as neither he was issued any charge-sheet nor conducted an enquiry by the Employer, thereby violated the principles of natural justice. He submitted that the Workman is gainfully unemployed from the date of his refusal of employment till date and as such, he is entitled for reinstatement along with full back wages and consequential benefits. In support of his oral contentions Ld. Rep. Shri P. Gaonkar relied upon the following judgments:

- a. In the case of D. K. Yadav v/s. M/s. J.M.A. Industries Ltd., reported in 1993 LLR 584 of Hon'ble Supreme Court of India.
- b. In the case of Chairman cum Managing Director, Coal India Ltd. and Anr. v/s. Nakul Kumar Choudhary and Ors., reported in CDJ 2009 SC 1698 of Hon'ble Supreme Court of India.
- c. In the case of Chhel Singh v/s. M.C.B. Gramin Bank, Pali and Ors., reported in 2014 LLR 901 of Hon'ble Supreme Court of India.
- d. In the case of Shashikant Gangaram Narkar v/s. Advance Transformers and Equipment's Pvt. Ltd. and Anr., reported in 2014 III CLR 829 of Hon'ble High Court of Bombay.

14. On the contrary, Ld. Adv. Shri M. S. Bhandodkar, representing the Employer, during the course of his oral arguments submitted that admittedly the Workman was working with the Employer as Painter continuously from his date of appointment till he deemed resigned from services w.e.f. 03-06-2010. He brought attention of this court to

the order of reference, which states that whether the non-employment of the Workman w.e.f. 03-06-2010 is a case of refusal of employment or an instance of voluntary absence on the part of the Workman and that in either case, what relief the Workman is entitled. He submitted that there is no question of refusal of employment to the Workman on any of the date arise as the Workman himself remained unauthorized absent from his duties from 01-05-2010 till 18-06-2010 without prior permission of the Employer. He submitted that the Workman was therefore issued a show-cause notice dated 03-06-2010 by bringing to his notice about his unauthorized absenteeism for the period from 01-05-2010 till 02-06-2010. He submitted that the Workman received the said show cause notice, however, did not report for his duties within a reasonable time. He submitted that the Employer therefore, discharged the Workman by implementing clause 9 of his appointment order, which states that "if you remained absent from duty for a continuous period of one month or more, without permission or sanction from management, it shall be deemed that you have resigned or left your employment with us of your own accord and accordingly, you shall ceased to be in our employment from the date of commencement of your such absence." He submitted that the perusal of the pleadings of the Workman filed in the present proceedings, it is clear that he has not challenged the terms of his appointment letter issued to him nor challenged the certified standing orders of the Employer. He submitted that in the absence of challenge to the same, the Workman cannot challenge his termination by alleging that it is a refusal of employment. He submitted that the Workman has also failed to plead in his claim statement about his voluntary absence for the particular period. He also brought to the notice of this court, certain irregularities in the pleadings of the Workman and the evidence on record. He submitted that even otherwise, the past record of the Workman was blemished. He submitted that in the past, the workman was also issued charge-sheet, warning letters etc. He therefore, submitted that the implementation of clause 9 of the appointment letter issued to the Workman is just, fair and legal as it is in accordance with the principles of natural justice. In support of his oral contentions, he relied upon the following judgements—

- a. In the case of Infomedia India Ltd. v/s. Suhas Shripad Gadre and Anr., reported in 2007 I CLR 846 of Hon'ble High Court of Bombay.

- b. In the case of G.I.S. Limited v/s. State of West Bengal & Ors., reported in 2014 LLR 290 of Hon'ble High Court of Calcutta.
- c. In the case of Syndicate Bank v/s. The General Secretary, Syndicate Bank Staff Association and Anr., reported in 2000 LLR 689 of Hon'ble Supreme Court of India.
- d. In the case of Haryana Roadways, Delhi v/s. Kirpal Singh reported in 2014 LLR 292 of Hon'ble High Court of Delhi.

I have carefully perused the entire records of the present case. I have also carefully considered the various oral submissions made by the Ld. Rep. Shri P. Gaonkar, appearing for the Workman as well as Ld. Adv. Shri M. S. Bhandodkar, appearing for the Employer.

15. Issue No. 1:

I am deciding the issue No. 1 and issue No. 3 simultaneously as both the said issue Nos. 1 and 3 are co-related to each other. The burden to prove the issue No. 1 is on the Workman, while the burden to prove the issue No. 3 is on the Employer.

In order to prove his case, the Workman has examined himself and a witness namely Shri James Mendonsa, the President of M/s. Majorda Beach Resort Employees Union. On the contrary, the Employer examined Shri A. Krishnan, its Chief Accountant and authorized person to prove their case.

16. Admittedly, the Workman was employed with the Employer as 'General Tradesman (Painter)' vide appointment letter dated 04-11-1993 (Exb.16). The evidence on record indicates that the Workman had applied for privilege leave on 15-04-2010 for the period from 03-05-2010 till 22-05-2012 on account of marriage of his relation, The evidence on record indicates that the said privilege leave applied by the Workman was not sanctioned by the Employer. The evidence on record indicates that the Workman remained absent from duties from 01-05-2010 till 18-06-2010. The evidence on record indicates that the Employer issued a show-cause notice dated 03-06-2010 to the Workman, thereby pointing out his unauthorized absence from duties, without permission or getting the leave sanctioned from his superior, before proceeding on leave w.e.f. 01-05-2010 to 02-06-2010 and invited his attention to clause 9 of the appointment letter issued to him. The evidence on record indicates that by the said show-cause notice dated 03-06-2010, the Workman was directed to show-cause as to why the disciplinary action shall not be taken against him by implementing the clause

9 of the appointment letter issued to him. The evidence on record indicates that the Workman came to report for his duties on 19-06-2010, however, he was not allowed to re-join his duties on the said day. The evidence on record indicates that he therefore, requested the Employer to allow him to re-join his duties, vide his representation dated 19-06-2010. The evidence on record indicates that the Workman submitted his reply to the aforesaid show-cause notice by his reply dated 19-06-2010 (Exb.39). The evidence on record indicates that the Employer Company, vide its letter dated 22-06-2010, informed the Workman that they have decided to implement clause 9 of the appointment letter issued to him and informed him that it is deemed that he has resigned from their services w.e.f. 03-06-2010. The said action of the Employer does not amount to refusal of employment to the Workman w.e.f. 03-06-2010. The evidence on record indicates that the Workman did not report for his duties on 03-06-2010 and as such the question of refusal of employment to the Workman w.e.f. 03-06-2010 does not arise. Even otherwise, it is not the case of the Workman that he had gone to report for his duties on 03-06-2010 and he was not allowed/refused the employment by the Employer. On the contrary, the evidence on record indicates that after remaining absent from duties from 01-05-2010 till 18-06-2010, the Workman had gone to report for his duties on 19-06-2010, he was not allowed to report for his duties. The said absence of the Workman from duties for the period from 01-05-2010 till he went to report for his duties on 19-06-2010 is unauthorized, without permission or getting the leave sanctioned from the competent authority allegedly on pretext of marriage of his relation.

17. The evidence on record indicates that marriage ceremony was scheduled on 07-05-2010 at Varkute Taluka Karmala District Solapur in Maharashtra State. The Workman also produced on record a copy of the prescription dated 20-05-2010 of Dr. Abhay M. Lunavat and Dr. Sapana Lunavat from Shree Sai Hospital at Madha and copies of two medical certificates, one dated 08-06-2010 from Krishanai Clinic of Dr. Surekha Lale and Dr. Rajendra Lale from Bhalvani, Taluka Pandharpur, State of Maharashtra certifying that Mrs. Mumtaz Kazi is suffering from 'tension headache' and she is under their treatment from 21-05-2010 and another dated 09-06-2010 from Primary Health Centre, Bhalvani, Taluka Pandharpur certifying that Mrs. Mumtaz Gapur Kazi was under his treatment from 21-05-2010 as she was suffering from hypertension and that she will require hospitalization for further investigation

and treatment. The aforesaid medical certificates as well as prescription of Dr. Lunavat produced by the Workman on record indicates that his wife Mrs. Mumtaz Kazi was under treatment of three different doctors at the same time on account hypertension. However, none of the doctors have certified that the wife of the Workman, Mrs. Mumtaz was an indoor patient for particular period nor the Workman has produced on record any medical investigation report of his wife for the aforesaid period. Further, upon careful perusal of the said medical certificates as well as prescription of Dr. Lunavat, it does not appear to me that the sickness of Mrs. Mumtaz Kazi was so serious, which constraint the Workman to station at the said location and/or the treatment for the said sickness was exceptional, which was not available in the State of Goa. For the aforesaid reasons, the explanation given by the Workman for his absence from 01-05-2010 till 18-06-2010 appears to be fictitious and unsatisfactory. Hence, it is held that the Workman remained absent from duty from 01-05-2010 till 18-06-2010 unauthorizedly, without permission or getting the leave sanctioned from the competent authority deliberately and intentionally. The issue No. 1 is therefore answered in the negative and the issue No. 3 is answered in the affirmative.

18. Issue No. 2:

While deciding the issue No. 1 herein above, I have come to the conclusion and held that the workman was not refused the employment by the Employer w.e.f. 03-06-2010. The question of illegality and unjustifiability of refusal of employment to the workman by the Employer w.e.f. 03-06-2010, does not arise at all. The issue No. 2 is therefore, answered accordingly.

19. Issue No. 4:

In the case of **D. K. Yadav (supra)**, before the Hon'ble Supreme Court of India, the Appellant willfully absented from duty for more than 8 days from 03-12-1980 without leave or prior information or intimation or previous permission from the management and therefore the Respondent terminated the services of the Appellant in terms of clause 13 (2) (iv) of its certified standing orders. The Hon'ble Apex Court has held that "*striking off the name from the rolls for unauthorized absence from duty amounted to termination of service and absence from duty for 8 consecutive days amounts to misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. It is settled law that certified standing orders have*

statutory force, which do not expressly exclude the application of principles of natural justice. It is a cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially, but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the concerned person. An order involving civil consequences must be made consistently with the rules of natural justice. Principles of natural justice must be read into standing order No. 13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read, the impugned action is violative of the principles of natural justice."

20. In the case of **Chairman cum Managing Director, Coal India Ltd. and Anr (Supra)** before the Hon'ble Supreme Court of India, the Respondent No.1 remained unauthorised absent from duties for more than 6 months and therefore his service was terminated. In the writ petition filed before the Hon'ble Division Bench of High Court affirm the order of the single bench in so far as reinstatement of the Respondent No. 1 was concerned, but modified the order of single judge by awarding him back wages. In an appeal before the Hon'ble Apex Court, it has been held that "*where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Enquiry Officer about the proof of charges. In the absence of any procedural illegality or irregularities in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted interference. The Division Bench like the Single Bench fell into grave error in not adequately adverting to the fact that the charges were admitted by the delinquent unequivocally and unambiguously and therefore the misconduct of the Respondent No. 1 was clearly established. Where the misconduct of the delinquent was unauthorised absence from duty for six months, but upon being charged for such misconduct, he fairly admitted his guilt and explained the reason for his absence, by stating that he did not have any intention nor desired to disobey the order of higher authorities or violate any of the Company's Rules and Regulations, but the reason was purely personal and beyond his control and as a matter of fact, he sent his resignation which was not accepted, the order of*

removal cannot be held to be justified, since, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh, but grossly in excess to the allegations. The Appellant shall reinstate the Respondent No.1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement."

21. In the case of **Chhel Singh (Supra)**, the Appellant was working as clerk-cum-cashier of bank, absented from duty for more than 10 months without prior permission. He was issued a show cause notice and also conducted a domestic enquiry. During the enquiry he submitted list of seven witnesses. However, only two witnesses were called by the Enquiry Officer and rest of the five witnesses were refused to be called by the Enquiry Officer. He was thereafter removed from services by issuing second show cause notice along with enquiry report. Appeal against the order of removal was dismissed. The Appellant filed a writ petition challenging the order of the disciplinary authority as well as the Appellate Authority which was allowed by the Ld. Single Judge awarding reinstatement with all consequential benefits. The respondent challenged the order of the Ld. Single Judge by filing writ appeal before the Division Bench. The Division Bench of Hon'ble High Court accepted the appeal by setting aside the order of the Ld. Single Judge. The Appellant therefore filed special leave petition before the Hon'ble Apex Court. The Hon'ble Apex Court held that "*medical reports were submitted after around 24 days, the allegation of wilful and deliberate absence was not there. It is not pleaded that medical reports were forged or fabricated. Termination from service in the absence of such findings or evidence to disbelieve the medical certificate is not justified and hence the order of the division bench is set aside and upheld the order of Ld. Single Judge.*"

22. In the case of **Infomedia India Limited (Supra)**, before the Hon'ble High Court of Bombay, the Respondent was employed as Machine Operator in the Petitioner's Establishment at Prabhadevi. He obtained leave from 01-07-1992 to 29-08-1992 on the ground that he was going on tour to South India. On expiry of leave, he did not report for duty. On 15-11-1992, the Respondent was informed that in terms of clause 13.4 of certified standing orders, he lost his lien on the job and his name is removed from the muster roll. The Respondent raised an industrial dispute. The Labour Court held that termination of service of Respondent was amounts to retrenchment and as Section 25-F of the Act was not complied with and as such reinstatement

with 50% of the back wages was directed. In writ petition filed by the Petitioner, the Hon'ble High Court has held that *"it is not possible to accept that there was an automatic loss of an lien and that before Petitioner proceeded to take action under clause 13.4 of Certified Standing Orders, atleast notice should have been given to Respondent so that he would have got an opportunity to explain why he was absent from work."*

23. In the case of the **Syndicate Bank (supra)**, the Hon'ble Apex Court held that *"bank has followed the requirements of clause 16 of the Bipartite Settlement. It is rightly held that Dayananda has voluntarily retired from the services of the bank under the circumstances it was not necessary for the bank to hold any enquiry before passing the order. An enquiry would have been necessary if, Dayananda had submitted his explanation which was not acceptable to the bank or contended that he did not report for duty but was not allowed to join by bank. Nothing of the like has happened here. Assuring for a moment that enquiry as necessitated, evidence led before the Tribunal clearly shows that the notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement. This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly lead to miscarriage of justice as far as the bank is concerned. Conduct of Dayananda as an employee of the bank has been astounding. It was not a case where the Tribunal should have given any relief to the Dayananda and yet the bank was directed to reinstate him with continuity of service."*

24. In the case of **G.I.S. Limited (supra)**, before the Hon'ble High Court of Calcutta, the Petitioner challenged the order of reference in writ petition on the ground that the appropriate Government has issued the order of reference without applying its mind and therefore, the order of reference is per se bad and is liable to be quashed and set aside. The Hon'ble High Court of Calcutta allowed the said writ petition filed by the Petitioner. The Hon'ble High Court of Calcutta, in para 7 of its judgment, distinguished the term "Resignation and Termination" as under:

"7. Registration and termination are two separate and distinct things. What could be culled out from Section 10 (4) of the Industrial Disputes Act, 1947 that the Labour Court or the Tribunal assumes jurisdiction from an order of referring an industrial dispute and,

therefore, is confined to adjudicate those points and the matters incidental to the said order of reference."

25. Among the aforesaid judgments, a judgment of Hon'ble Apex Court in the case of **D.K. Yadav (supra)**, is on the point in issue and also applicable to the case in hand. Applying the law laid down by the Hon'ble Apex Court in its aforesaid judgment, in the case in hand, while deciding the issue No.3, I have discussed hereinabove and came to the conclusion that the Workman remained absent deliberately and unauthorizedly from 01-05-2010 till 18-06-2010. The evidence on record indicates that the Employer, vide its letter dated 03-06-2010 (Exb. 38), issued a show-cause notice to the workman by pointing out his unauthorized absence from duty from 01-05-2010 to 02-06-2010 and brought his attention to clause 9 of his appointment letter and further directed him to show-cause as to why strict disciplinary action should not be taken against him by implementing the said clause 9 of the appointment letter. The evidence on record indicates that the Workman replied to the show-cause notice vide his letter dated 19-06-2010 received by the Employer on 21-06-2010 (Exb. 39). By his reply dated 19-06-2010 (Exb. 39), the Workman submitted, that he had applied for privilege leave for the period from 03-05-2010 to 22-05-2010 on 15-04-2010 and again on 01-05-2010 on account of marriage of his niece and nephew and that his wife was admitted in Government hospital on 21-05-2010. The evidence on record indicates that the Employer, vide his letter dated 22-06-2010 (Exb. 14), implemented clause 9 of the said appointment letter issued to the Workman and it is deemed that he has resigned from the services of the Company w.e.f. 03-06-2010. Thus, it is clear that the Workman was terminated from service by the Employer by implementing clause 9 of the appointment letter issued to him as well as the service rules at Exb.32 (cross) on account of the unauthorized absence of the Workman without holding an enquiry.

26. The service rules of the Employer, which are on record at Exb. 32 (cross) have not been certified by the competent authority in accordance with the rules in force. Admittedly, the Workman was issued an appointment letter dated 04-11-1993 (Exb.16) by the Employer. Clause 9 of the said appointment letter issued to the Workman on record states that *"if you remain from the duty for a continuous period of one month or more without permission of sanction from management, it shall be deemed that you have resigned from and left your employment with us of your own accord and,*

accordingly, you shall cease to be in our employment from the date of commencement of your such absence." The said clause has to be read alongwith the principles of natural justice.

27. Unauthorized absence from duty amounts to misconduct and therefore while implementing clause 9 of the said appointment letter issued to the Workman, the principles of natural justice is required to be followed mandatorily. In the instant case, the Employer has issued a show cause notice to the Workman. The Workman has also filed his reply to the said show cause notice issued to him, thereby tried to justify his absence from duty for the relevant period. It was therefore, incumbent upon the Employer to hold a domestic enquiry by issuing a charge-sheet to the Workman. The Employer has however, failed to do so. The said action of the Employer of implementing clause 9 of the appointment letter of the Workman is in violation of the principles of natural justice and as such it is illegal, unjustified and bad-in-law.

28. In the case of **Shashikant Gangaram Narkar (supra)**, the Hon'ble High Court of Bombay has held that *"it is well settled that when the termination of service of employee is found illegal and hence set aside, the employee is not entitled to full back wages automatically or mechanically. There is not precise formula on the point of grant of back wages. It always depends on the facts and circumstances of each case."*

29. The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is well recognized and also applicable to the case in hand. In the instant case, the Workman was working as General Tradesman (Painter) w.e.f. 04-11-1993. The evidence on record indicates that the Workman remained absent from duty deliberately and unauthorizedly from 01-05-2010 till 18-06-2010 on the pretext of marriage of his relation as well as sickness of his wife. The evidence on record further indicates that in the past, the Workman had admitted the charges of misconduct leveled against him vide charge-sheet dated 23-06-2007 and the Workman was punished for suspension of four days from work without wages from 07-01-2009 till 10-01-2009. Further the workman was warned that any repetition of such of similar misconduct would be viewed seriously. The letter of the Employer dated 14-10-2009 addressed to the Workman (Exb. 37) indicates that the Employer has taken note of negligence in duties of the Workman and

warned him that if the same is repeated the Employer would be under painful necessity to terminate his services. Thus, the aforesaid conduct of the Workman disentitled him reinstatement in service. In my considered opinion, a payment of lumpsum compensation of Rs. 1,00,000/- (Rupees one lakh only) instead of reinstatement with back wages and consequential relief would meet the ends of justice.

In view of above, I proceed to pass the following order:

ORDER

1. It is held that the non-employment of Shri Gapur Kazi w.e.f. 03-06-2010 by the management of M/s. Majorda Beach Resort, Majorda, Goa, is an instance of voluntary absence on the part of the workman.
2. The management of M/s. Majorda Beach Resort, Majorda, Goa, is therefore directed to pay to the Workman, Shri Gapur Kazi a sum of Rs. 1,00,000/- (Rupees one lakh only).
3. No order as to cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer
Labour Court-II

Department of Law & Judiciary

Law (Establishment) Division

Order

No. 1/7/2014-LD(Estt.)/1297

Government of Goa is pleased to accept the resignation tendered by Adv. Sapna Mordekar as Additional Government Advocate to appear and defend the interests of the Government in the matters before High Court of Judicature at Bombay, Panaji Bench, Goa with immediate effect.

Adv. Sapna Mordekar shall return all the briefs pending with her if any, to the Office of Ld. Advocate General, Altinho, Panaji under intimation to this Department.

By order and in the name of the Governor of Goa.

Manuel Barreto, Under Secretary, Law (Estt).
Porvorim, 12th July, 2016.

Order

No. 1/13/2014/LD(Estt.)/1296

The Government of Goa is pleased to appoint Shri Dattaprasad Prabhu Lawande, Advocate, to be Additional Advocate General for the State of Goa.

This order shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Manuel P. Barreto, Under Secretary, Law (Estt.).
Porvorim, 14th July, 2016.

Order

No. 2/49/2015-LD (Estt.)/1308

On the recommendation of the Goa Public Service Commission (GPSC) as conveyed vide their letter No. COM/II/11/55(2)/2015/138 dated 16-06-2016, Government is pleased to promote the following Head Clerks/UDCs to the post of Civil Registrar-cum-Sub-Registrar on regular basis in the Pay Band 2, Rs. 9,300-34,800+4,200 G. P/- and other allowances to be fixed as per rules with immediate effect:

1. Shri Hanumant G. Dessai.
2. Smt. Shobana Chodankar.
3. Smt. Shubha H. Desai.
4. Smt. Sujata S. Raut Desai.
5. Smt. Urmia U. Tari.
6. Shri Premanand K. Dessai.

The above officers shall be on probation for a period of two years.

Consequent upon their promotion, they shall continue to work at places where they were presently working on ad hoc basis.

Salary shall be drawn against Budget Head 2030—Stamps and Registration; 03—Registration; 001—Direction and Administration; 02—District Charges; 01—Salaries and 01—Superintendence. They shall exercise their option for fixation of the pay in the promotional grade in terms of FR 22 (I) (a) (i) within a period of one month from the date

of their promotion as Civil Registrar-cum-Sub-Registrar. The option once exercised shall be final.

By order and in the name of the Governor of Goa.

Manuel Barreto, Under Secretary (Estt.).
Porvorim, 18th July, 2016.

Department of Personnel**Order**

No. 3/1/80-PER (Vol.IV)

Governor of Goa is pleased to order to post Shri Vimal Anand Gupta, IPS as DIGP (Crime) with additional charge of DIGP (Range) of Police Department with immediate effect in public interest.

Shri Vimal Anand Gupta, IPS shall continue to hold the charge of Superintendent of Police (ACB).

By order and in the name of the Governor of Goa.

Surendra F. Naik, Under Secretary (Personnel-II).
Porvorim, 15th July, 2016.

Order

No. 4/5/2012-PER

Read: 1. Government Order No. 6/2/95-PER (Vol.I) dated 03-07-2012.

2. Government Order No. 4/5/2012-PER dated 13-7-2015.

The deputation period of Shri Nilesh B. Fal Dessai, Managing Director, Info Tech Corporation of Goa Ltd. (ITG) is hereby extended for a further period of one year up to 05-07-2017 and shall be governed by the same terms and conditions of deputation as contained in the above referred order dated 03-07-2012.

By order and in the name of the Governor of Goa.

Surendra F. Naik, Under Secretary (Personnel-II).
Porvorim, 20th July, 2016.

Department of Planning

Directorate of Planning, Statistics & Evaluation

Order

No. DPSE/1/ADMN/MACP/2016/1780

Read: 1) O. M. No. 1/1/82-PER (Part-VI) dated 6-8-09 Department of Personnel, Government of Goa, Secretariat, Porvorim.

In pursuance of the instructions contained in the Circular quoted above and on recommendations of the Departmental Screening Committee, the Government is pleased to grant Modified Assured Career Progression Scheme (MACP) to the following Officers of the Common Statistical Cadre of this Directorate, who have completed required prescribed years of continuous service i.e. 10/20/30 years as the case may be in their existing posts are hereby granted the next higher pay scale under the Modified Assured Career Progression Scheme as shown against their respective names.

Sr. No.	Name and designation	Dept in which presently working	Date of initial appointment on regular basis	Pay scale granted under MACP	Date of financial benefit w.e.f.	Type of upgradation granted
1	2	3	4	5	6	7
1.	Dr. Suresh Shanbhogue, Joint Director	Directorate of Civil Aviation, Secretariat	01-11-1993	MACP PB-3 Rs. 15,600-39,100+7,600 (GP)	17-08-2015	3rd F.B
2.	Dr. Y. Durga Prasad, Joint Director	DPSE, Porvorim	09-06-1994	MACP PB-3 Rs. 15,600-39,100+7,600 (GP)	17-08-2015	3rd F.B
3.	Shri Anil Kumar Agarwal, Deputy Director	Directorate of Health Services, Panaji	18-10-1983	MACP PB-3 Rs. 15,600-39,100+6,600 (GP)	17-08-2015	3rd F.B

By order and in the name of the Governor of Goa.

Vikas S. N. Gaunekar, Director & ex officio Joint Secretary (Planning).

Porvorim, 12th July, 2016.



Department of Public Health

Order

No. 4-13-2002-II/PHD/927

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM//II/11/30(5)/96/134 dated 16-06-2016, Government is pleased to promote Dr. Vanda Maria Yasmin De Sequeira Fernandes, Assistant Professor in Radiology to the post of Associate Professor in Radiology in Goa Medical College, Bambolim-Goa on regular basis in the pay scale of PB-3: Rs. 15,600-39,100+GP: Rs. 6,600/- and other allowances to be fixed as per rules, with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Jeevan Vernekar, Associate Professor to the post of Professor in Radiology.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 18th July, 2016.

Order

No. 4-13-2002-II/PHD/928

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM//II/11/30(1)/12/132 dated 16-06-2016, Government is pleased to promote Dr. Ambika Sumeet Juwarkar, Lecturer in Radiology to the post of Assistant Professor in Radiology in Goa Medical College, Bambolim-Goa on regular basis in the pay scale of PB-3: Rs. 15,600-39,100+GP: Rs. 6,600/- and other allowances to be fixed as per rules, with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Vanda Maria Yasmin De Sequeira Fernandes, Assistant Professor to the post of Associate Professor in the Department of Radiology, Goa Medical College, Bambolim-Goa vide order No. 4-13-2002-II/PHD dated 18-07-2016.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 18th July, 2016.

Order

No. 4-16-2005-II/PHD/930

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(2)/2016/131 dated 16-06-2016, Government is pleased to promote Dr. Dipti A. Srivastava, Lecturer in Ophthalmology to the post of Assistant Professor in Ophthalmology in Goa Medical College, Bambolim-Goa on regular basis in the pay scale of PB-3: Rs. 15,600-39,100+GP: Rs. 6,600/- and other allowances to be fixed as per rules, with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Vivek S. Naik, Assistant Professor to the post of Associate Professor in the Department of Ophthalmology, Goa Medical College, Bambolim-Goa vide order No. 4-16-2005-II/PHD dated 21-01-2016.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 19th July, 2016.

Order

No. 4-18-2002-II/PHD/Vol. 2/933

On the recommendation of Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(3)/2016/135 dated 16-06-2016, Government is pleased to promote Dr. Isabela Coelho Correia Afonso, Assistant Professor, Physiology to the post of Associate Professor in Physiology in Goa Medical College, Bambolim-Goa on regular basis in the pay scale of PB-3: Rs. 15,600--39,100+GP: Rs. 6,600/- and other allowances to be fixed as per rules, with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Sandeep Sardessai, Associate Professor to the post of Professor in the Department of Physiology, Goa Medical College, Bambolim-Goa vide order No. 4-18-2002-II/PHD/Vol. 2 dated 07-07-2015.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 19th July, 2016.

Order

No. 47/1/2011-I/PHD/1263

Read: 1. Order No. 47/1/2011-I/PHD dated 12-06-2012.

2. Order No. 47/1/2011-I/PHD dated 29-08-2013.

3. Order No. 47/1/2011-I/PHD dated 10-09-2014.

4. Order No. 47/1/2011-I/PHD dated 18-06-2015.

Ex-post facto approval of the Government is hereby conveyed for extension of deputation of Dr. Vasco Teles, Medical Officer, North Goa District Hospital, Mapusa under Directorate of Health Services as Medical Officer (Male) in Central Jail, Colvale for further period of one year w.e.f. 12-06-2016, subject to the condition that he shall not be entitled to draw deputation allowances.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).

Porvorim, 19th July, 2016.

Order

No. 24/9/2006-I/PHD/1245

Read: 1) Order No. 24/9/2006-I/PHD dated 26-08-2014.

2) Order No. 24/9/2006-I/PHD dated 13-08-2015.

Government is pleased to extend the term of contract appointment of following Homeopathic Physicians under Directorate of Health Services for a further period of one year shown against their names or till the posts are filled on regular basis whichever is earlier:

Sr. No.	Name of the Homeopathic Physician	Place of posting	Period of extension of contract
1	2	3	4
1.	Dr. Indira Noronha	Primary Health Centre, Candolim-Goa	09-06-2016 to 08-06-2017.
2.	Dr. Elizabeth F. V. Lacerda	Urban Health Centre, Margao-Goa	07-06-2016 to 06-06-2017.

1	2	3	4
3.	Dr. Rupali Vernekar	Primary Health Centre, Aldona-Goa	06-06-2016 to 05-06-2017.
4.	Dr. Vijayalaxmi Deepak Desai	Primary Health Centre, Balli-Goa	09-06-2016 to 08-06-2017.
5.	Dr. Domnic Maurilo D'Souza	Primary Health Centre, Cortalim-Goa	09-06-2016 to 08-06-2017.
6.	Dr. Swati Vishwanath Desai	Community Health Centre, Valpoi-Goa	10-06-2016 to 09-06-2017.
7.	Dr. Pallavi M. Kanekar	Primary Health Centre, Sankhali-Goa	09-06-2016 to 08-06-2017.
8.	Dr. Reena Sandeep Parab	Community Health Centre, Ponda-Goa	10-06-2016 to 09-06-2017.
9.	Dr. Marilyn D. T. V. Teles	Primary Health Centre, Quepem-Goa	11-06-2016 to 10-06-2017.
10.	Dr. Sprandhan Desai	Community Health Centre, Canacona-Goa	19-06-2016 to 18-06-2017.

The above Homeopathic Physician shall be paid monthly emoluments of Rs. 30,000/- (Rupees thirty thousand only) on the same terms and conditions contained in the earlier agreement executed by them with the Government.

This issues with the concurrence of the Finance (R&C) Department vide their U. O. No. 1413508 dated 13-07-2016 and approval of Personnel Department vide their U. O. No. 1413508 dated 02-07-2016.

This order is issued subject to approval of the Cabinet.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).

Porvorim, 19th July, 2016.

Order

No. 11/3/89-IV/PHD/6/958

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/14/(1)/2016/133 dated 16-06-2016, Government is pleased to promote Dr. Ridhima A. Gaunkar, Lecturer in Public Health Dentistry (Community Dentistry) to the post of Assistant Professor in Public Health Dentistry (Community Dentistry) in Goa Dental College and Hospital, Bambolim on regular basis in the Pay Band—3, Rs. 15,600-39,100 with Grade Pay of Rs. 6,600/- and

other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to revival of the post of Assistant Professor in Public Health Dentistry (Community Dentistry), Goa Dental College and Hospital, vide order No. 4/1/2014-IV/PHD dated 26-11-2015.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 21st July, 2016.

Raj Bhavan

Order

No. G/GU/VC/3/87/Vol. IV/77

In exercise of the powers conferred upon me under sub-section (1) of Section 11 of the Goa University Act, 1984 (7 of 1984), I, Mridula Sinha, Governor of Goa and Chancellor of Goa University, hereby appoint Dr. Varun Sahni, Professor in International Politics, School of International

Studies, Jawaharlal Nehru University, New Delhi, as the Vice Chancellor of Goa University, for a term of five years, from the date he joins duty.

2. The salary and other allowances and conditions of the appointment will be as provided in the Statutes of the Goa University, as amended from time to time, for the office of the Vice-Chancellor of Goa University.

Mridula Sinha, Governor of Goa and Chancellor of Goa University.

Dona Paula, 18th July, 2016.

Department of Revenue

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Order

No. 3/13/2005-RD/Part/2315

The Government has accepted the report dated 30-05-2016 of Mamlatdar and Administrator of Devalayas, Quepem Taluka of Managing Committee of Shree Dattamandir Devasthan, Quepem regarding failure to submit audit report/budget, disobedience to orders of the Administrator of Devalayas and failure to conduct election for new Managing Committee for triennium 2016-19 on scheduled date and therefore in exercise of power conferred by Article 44 of Devasthan Regulation, the existing Managing Committee of Shree Dattamandir Devasthan Quepem, is hereby dissolved.

The Mamlatdar of Quepem and Administrator of Devalayas is hereby directed to propose an Ad hoc Managing Committee as per provisions of Article 45 of the Devasthan Regulation so that free and fair election of Managing Committee for Triennium 2016-19 can be held of the above said Devasthan.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Rev-II).

Porvorim, 25th July, 2016.

Department of Women & Child Development

Directorate of Women & Child Development

—
Order

No. 1-229-2003/DW&CD/part/5245

On the recommendation of the Goa Public Service Commission conveyed vide letter No. COM/II/11/59(1)/2010/154 dated 27th June, 2016, the Government is pleased to promote Smt. Maria Ruth Almeida, Child Development Project Officer to the post of District Programme Officer, North District (Group 'B', Gazetted) on regular basis in the pay scale of Rs. 9,300-34,800+Grade Pay of Rs. 4,800/- in the Directorate of Women and Child Development.

The expenditure in respect of the above post shall be debited to the Budget Head of Account "2235—Social Security and Welfare; 102—Child Welfare; 03—Integrated Child Development Scheme including Health Cover (plan) (A)—01 Salaries under Demand No. 58.

By order and in the name of the Governor of Goa.

Shilpa Shinde, IAS, Director & ex officio Joint Secretary (WCD).

Panaji, 19th July, 2016.

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